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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/973,802	10/11/2001	Shoichi Taneichi	0445-0309P	8999
2292	7590	01/13/2004	EXAMINER	
BIRCH STEWART KOLASCH & BIRCH			WATKINS III, WILLIAM P	
PO BOX 747			ART UNIT	
FALLS CHURCH, VA 22040-0747			PAPER NUMBER	

1772

DATE MAILED: 01/13/2004

14

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary**Application No.**

09/973,802

Applicant(s)

TANEICHI ET AL.

Examiner

William P. Watkins III

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 October 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3 and 5-10 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3 and 5-10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 14. 6) ☐ Other: _____

DETAILED ACTION

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 21 October 2003 has been entered.

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

3. Claims 1-3, 5, 8-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Vander Wielen et al. (U.S. 4,720,415) in view of Schleinz et al. (U.S. 5,612,118).

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Vander Wielen et al. teaches a gathered top layer joined to an elastic layer. The gathered layer may be a carded web (col. 12, lines 15-20). Elastic fibers are taught as forming the elastic layer of Vander Wielen et al. and can be in the form of nonwoven webs (col. 4, lines 60-65). Schleinz et al. teaches that a joined layer can be gathered by elastic fibers that are heat shrunk (col. 8, lines 1-10, col. 4, lines 35-40). The instant invention claims the use of elastic fibers, which heat shrink to form a gathered web. It would have been obvious to one of ordinary skill in the art to use heat shrink fibers to gather the web of Vander Wielen et al. because of the teaching of Schleinz et al. that heat shrinking can be used instead of elastic expansion before bonding in order to construct a gathered web laminate. Selection of specific fiber density and degree of elastic expansion is dependent on the final application and is taken as being within the ordinary skill of the art absent unexpected results.

4. Claims 6 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Vander Wielen et al. in view of Schleinz et al. as applied to claims 1-5 and 8 above, and further in view of Zelazoski et al. (U.S. 5,536,555).

Zelazoski et al. teaches putting holes in gathered webs in order to allow good fluid intake rates (col. 2, lines 1-15). The instant invention claims a gathered web with perforations. It would have been obvious to one of ordinary skill in the art to have perforated the web of Vander Wielen et al. in view of Schleinz et al. in order to have good fluid intake because of the teachings of Zelazoski et al.

5. Applicant's argument's filed 21 October 2003 have been considered but are not considered to be persuasive.

Applicant continues to argue that the elastic layer of Schleinz et al. is a sheet or strand or rope and not a fibrous aggregate. As a first point the examiner notes that a standard definition of a strand is a group of twisted fibers (Webster's II, New Riverside University Dictionary, 1984). Thus the elastic layer of Schleinz et al. can be considered as a fiber aggregate. The examiner also notes that elastic fibers are taught by Vander Wielen et al. (col. 4, lines 60-65). One seeking modify the elastic material of Vander Wielen et al. by the teaching of Schleinz et al. to use a heat shrink elastic material would be inclined to keep the material of Vander Wielen et al. as fibers in the taught form of a nonwoven web, absent a

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motivation to use a different material form. Schleinz et al. does not forbid the use of fibers, and as noted above teaches strands, which are made of fibers. Regarding claim 9, Vander Wielen et al. teaches use of a carded web as noted in the above rejection. Regarding claim 10 Vander Wielen et al. teaches a nonwoven web as noted above.

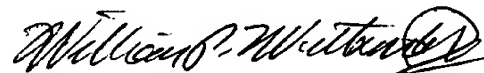
In general applicant continues to address the rejection in a piecemeal fashion by saying that Vander Wielen et al. elongates the elastic web before bonding it to the web to be gathered instead of bonding and then heat shrinking. The examiner does not rely on Vander Wielen et al. for this limitation of heat shrinking but instead on Schleinz et al., which applicant attacks as not being applicable to heat shrinkable elastic fiber aggregates, which is clearly an erroneous argument as noted above. The motivation to combine the two references is clear as Schleinz et al. teaches elongation and heat shrinking as art recognized alternative means of gathering a nonelastic or less elastic web by joining to an elastic web.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to William P. Watkins III whose telephone number is 571-272-1503. The examiner works an increased flex time schedule, but can normally

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be reached Monday through Friday, 11:30 A.M. through 8:00 P.M. Eastern Time. The examiner returns all calls within one business day unless an extended absence is noted on his voice mail greeting.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon can be reached on 571-292-1498. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

A handwritten signature in cursive script, reading "William P. Watkins III". The signature is written in dark ink and includes a stylized flourish at the end.

**WILLIAM P. WATKINS III
PRIMARY EXAMINER**

WW/ww

January 12, 2004